

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE GUERRA,

No. C 10-04800 CW (PR)

Petitioner,

ORDER TO SHOW CAUSE AND
ADDRESSING PENDING MOTIONS

v.

M. MARTEL, Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee.

Petitioner has filed a request for "available copies of trial records, transcripts, etc." in Santa Clara County Superior Court Case no. CG580514. (Req. for Tr. at 1.) He has also filed a motion for appointment of counsel.

It does not appear from the face of the petition that it is without merit. Good cause appearing, the Court hereby issues the following orders:

1. The Clerk of the Court shall serve a copy of this Order and the petition and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at his current address.

2. Respondent shall file with this Court and serve upon Petitioner, within one-hundred twenty (120) days of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.

1 The Court construes Petitioner's request for "available copies
2 of trial records, transcripts, etc." as a request for an Order
3 directing Respondent to serve Petitioner with the aforementioned
4 exhibits. Good cause appearing, the request (docket no. 2) is
5 GRANTED. Respondent shall file with the Answer a copy of all
6 portions of the relevant state records that have been transcribed
7 previously and that are relevant to a determination of the issues
8 presented by the petition.

9 3. If Petitioner wishes to respond to the Answer, he shall
10 do so by filing a Traverse with the Court and serving it on
11 Respondent within sixty (60) days of his receipt of the Answer.
12 Should Petitioner fail to do so, the petition will be deemed
13 submitted and ready for decision sixty (60) days after the date
14 Petitioner is served with Respondent's Answer.

15 4. Respondent may file with this Court and serve upon
16 Petitioner, within sixty (60) days of the issuance of this Order, a
17 motion to dismiss on procedural grounds in lieu of an Answer, as
18 set forth in the Advisory Committee Notes to Rule 4 of the Rules
19 Governing Section 2254 Cases. If Respondent files such a motion,
20 Petitioner shall file with the Court and serve on Respondent an
21 opposition or statement of non-opposition to the motion within
22 sixty (60) days of receipt of the motion, and Respondent shall file
23 with the Court and serve on Petitioner a reply within fifteen (15)
24 days of receipt of any opposition.

25 5. It is Petitioner's responsibility to prosecute this case.
26 Petitioner must keep the Court and Respondent informed of any
27 change of address and must comply with the Court's orders in a
28 timely fashion. Petitioner must also serve on Respondent's counsel

1 all communications with the Court by mailing a true copy of the
2 document to Respondent's counsel.

3 6. Extensions of time are not favored, though reasonable
4 extensions will be granted. Any motion for an extension of time
5 must be filed no later than ten (10) days prior to the deadline
6 sought to be extended.

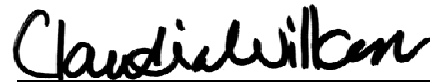
7 7. Petitioner's motion for appointment of counsel (docket
8 no. 2) is DENIED. The Sixth Amendment right to counsel does not
9 apply in habeas corpus actions. See Knaubert v. Goldsmith, 791
10 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B),
11 however, authorizes a district court to appoint counsel to
12 represent a habeas petitioner whenever "the court determines that
13 the interests of justice so require" and such person is financially
14 unable to obtain representation. The decision to appoint counsel
15 is within the discretion of the district court. See Chaney v.
16 Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at
17 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The
18 courts have made appointment of counsel the exception rather than
19 the rule by limiting it to: (1) capital cases; (2) cases that turn
20 on substantial and complex procedural, legal or mixed legal and
21 factual questions; (3) cases involving uneducated or mentally or
22 physically impaired petitioners; (4) cases likely to require the
23 assistance of experts either in framing or in trying the claims;
24 (5) cases in which petitioner is in no position to investigate
25 crucial facts; and (6) factually complex cases. See generally 1 J.
26 Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure
27 § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
28 when the circumstances of a particular case indicate that appointed

1 counsel is necessary to prevent due process violations. See
2 Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
3 Cir. 1965). This denial is without prejudice to the Court's
4 reconsideration on its own motion should it find an evidentiary
5 hearing necessary following consideration of the merits of
6 Petitioner's claims.

7 8. This Order terminates Docket nos. 2 and 3.

8 IT IS SO ORDERED.

9 Dated: 11/22/2010



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNDERSEAL,

Plaintiff,

v.

UNDERSEAL et al,

Defendant.

Case Number: CV10-04800 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jose Reyes Guerra F-57686
Mule Creek State Prison
P.O. Box 409040
B-8-114L
Ione, CA 95640

Dated: November 22, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk